



REPUBLIC OF KENYA



**In re MA (Minor) (Adoption Cause E003 of 2021)
[2023] KEHC 23705 (KLR) (17 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 23705 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
ADOPTION CAUSE E003 OF 2021
RM MWONGO, J
OCTOBER 17, 2023**

IN THE MATTER OF

CWM APPLICANT

JUDGMENT

1. Baby MA was found by a good Samaritan abandoned in Villa Estate on 8th May 2014. He was taken to Embakasi Police Station where a report of the abandonment was made in the OB in Entry No XXXX/2014. The child was initially taken to Nairobi Children’s Rescue Centre. The child’s age was assessed to be 5 years on 9th May 2014.
2. Efforts to trace the parents were unfruitful as shown in a letter Ref C/ORGXXXX/149 by the Officer Commanding the Embakasi Police Station addressed to the Children’s Court in Nairobi. The child was later transferred to Imani Children’s Home and admitted as a child under care and protection following an Order on 5th October, 2015, of the Children’s Court in Nairobi in C&P No XXX of 2014.
3. On 26/8/2016 CWM and her husband agreed to be the guardians of Baby MA. They took full financial, emotional, physical, mental and educational responsibility of Baby MA. On 3rd April 2020, CWM’s husband tragically died from diabetes. However, CWM continued to be the guardian of Baby MA.
4. CWN chose RWM to act as Guardian ad litem for Baby MA after obtaining his affidavit of consent, and sought his appointment by chamber summons dated 16th December, 2020. The said application also sought that the guardian ad litem and the Director, Children’s Services, do investigate the applicant’s fitness to adopt Baby MA and that they should file their respective reports into court.
5. Simultaneously, as is often the case, by an originating summons dated 16th December, 2020, CWM applied to adopt Baby MA [properly called Moses Atiende but which name is herein redacted for the privacy of the child]. The summons also seeks that KM and MWM be appointed as the legal guardians of Baby MA, that Baby MA be known as MMM [MMM which name is herein redacted for the privacy



- of the child], That the Registrar General be directed to make an entry in the Register a record of the adoption, that the child be presumed to be Kenyan by birth, and that the Court do make any other necessary orders.
6. Significantly, and as required by section 156(1) of the *Children Act* and the Adoption Regulations the applicant annexed with her statement the Certificate of Declaring a Child Free for Adopting S. No 700 from the KKPI Adoption Society which details the legal history and particulars of the child.
 7. The Court on 23rd November, appointed Rubenson Waweru Mariri to as Guardian ad litem for Baby MA, and directed the Director, Children’s Services, to investigate the applicant’s fitness to adopt Baby MA and to file a report thereof into Court.
 8. Reports were filed in court by the Guardian Ad Litem and the Director, Children’s Services, respectively on 27th June 2022 and 5th January 2023 as to the applicant’s fitness to adopt Baby MA. Both reports favourably recommend the adoption of Baby MA by CWM as being in the best interests of the child.
 9. The report by the Director, Children’s Services dated 5th December, 2022, details the particulars of the applicant, the child and the home environment. It notes that the child was aged 11 years 7 months at the time the report was written; that the child was formally placed with the applicant on 21st May 2017; that there was a Guardian ad litem in place to cater for the child’s legal interests; that the applicant is a widow aged 57 years and that a visit to the applicant’s home was conducted.
 10. Further, the report indicates that the applicant is the third born child of six siblings, and gives their home circumstances; it sets out the details as to the applicant’s marriage to her deceased husband with whom they were unable to sire a child due to removal of her uterus on account of severe fibroids; that she has a very strong social support network from members of her family, her deceased husband’s family and her church, ACK Wanga; that the child had been in her care for six years; that the child had bonded well with the applicant and fondly refers to her as “mum”; that the child is very free with his parent and extended family; that the child attends school in grade 5 at [redacted].
 11. The report also indicates that the applicant is financially stable, has income from rental units in Kutus and a coffee farm; that she owns several parcels of land and has few livestock. As such, the applicant is financially suitable to adopt the child. The home environment was also found to be suitable being a permanent three bedroomed house with all amenities and furniture; adequate water and electricity connections. She also had a bank statement indicating that she could manage the child’s needs adequately.
 12. The Children’s Officer concludes:

“The [applicant] meets the legal requirements as set out in Section 184 of the *Children Act* 2022 and the Adopting Regulations 2005. The applicant and the child are well matched....

The child is healthy, happy, and well bonded with the applicant. The prospective adoptive parent is physically, socially, economically and emotionally fit to adopt the child. She lives in harmony with her entire family and is fully committed to take good care of the child until his adulthood.”
 13. The Children’s Officer recommends:

“From my observation and assessment, the adoption will be in the best interest of the child”



14. Similarly, the Guardian ad Litem in his report observes and recommends:

“The adoptive mother has provided the required motherly care to the child. The child now has an opportunity to live the normal life of a child with a caring parent. The two have gradually bonded to a point that they are now a mother and child naturally. The child is healthier, happy loved and well provided”

Analysis and Determination

15. Having considered the application herein, the affidavits in support together with the annexures thereof, I am satisfied that this is a local adoption given that the applicant is a Kenyan citizen. Section 181 (1) of the Children’s Act, 2022 provides:

“Any child who is resident within Kenya may be adopted whether or not the child is a Kenyan citizen, or was or was not born in Kenya.”

16. Similarly, it is evident that the child, now five years, is above six (6) weeks and below 18 years which is the requisite age bracket for a child to qualify for adoption (see Section 184 (1) of the Children’s Act). He has been declared free for adoption and effectively placed under the care and control of the applicants for a continuous period of at least three (3) months pursuant to Section 184(1) of the Children’s Act.

17. The adoption agency, KKPI Adoption Services, has offered the child for adoption hence, the child is available for adoption.

Suitability of the applicant for adoption.

18. The applicant is a Kenyan citizen and an adult aged below 65 years and above 25 years being the mandatory age requirement for any adoptive parent seeking to adopt a baby pursuant to Section 186(1) (2) of the Children Act.

19. The applicant has been assessed and evaluated by various stake holders under the Children Act, and found suitable in terms of the set criteria. She is financially stable, physically, mentally, morally, socially and emotionally fit. From the documentation availed, she has no criminal record and does appreciate the consequences of adoption. In the circumstances, the applicant has met the necessary legal requirements to adopt the child. This has been confirmed in the statutory report filed on 5th January, 2023 by the Director, Children Services.

20. The main factor for consideration before making any decision affecting the affairs of a child is the child’s best interest. This principle is articulated under Article 53(2) of the Constitution which provides:

“(2) A child’s best interests are of paramount importance in every matter concerning the child.”

21. Section 4(2) and (b) of the Children’s Act, 2001, replicates this fundamental principle.

22. I am satisfied that the applicant has met all the legal requirements for adoption. This is a simple straightforward case of a local adoption in which all the required documents and affidavits have been filed and legal procedure for adoption followed. Accordingly, it would be just to issue the appropriate adoption order as mandated by Section 154(1) of the Children Act, 2001.

23. It is to be noted although the Children Act 2022, was assented to on 26th July 2022, the application herein was made under the Children Act 2001, in 2021. The provisions of Paragraph 3 of the Seventh



Schedule to the *Children Act* 2022 permit the court to continue proceedings that were commenced under the repealed Act, and to be concluded thereunder.

Disposition

24. From all the foregoing, the court is satisfied that all the legal requirements for the adoption of baby MA have been met, and that from all the evidence and documents availed in court, including the visits to court by the applicant with the child and legal guardians, the applicant is properly suited to adopt Baby MA and that such adoption is in the best interests of the child.
25. Accordingly, the Court issues the following orders:
 - a. That the Applicant, CWM, a farmer by occupation resident in Kutus, Kirinyaga County, and of ID No 8797030 is hereby authorised to adopt Baby MA;
 - b. That the said MA shall henceforth be known as MMM;
 - c. That Reubenson Waweru Mariri is hereby discharged as the Guardian ad Litem of MMM;
 - d. That Kathuri Macemo and Margaret Wambui Muchira be and are hereby appointed as the Legal Guardians of MMM in the event of the death of his mother CWM before MMM is of full age and fully self-reliant;
 - e. That the Registrar General be and is hereby directed to enter in the adopted children's register an entry recording the adoption herein;
 - f. That MMM is hereby presumed to be a Kenyan citizen by birth;
 - g. That there shall be no orders as to costs.
26. Orders accordingly.

DATED AT KERUGOYA THIS 17TH DAY OF OCTOBER 2023

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R. MWONGO

JUDGE

Delivered in the presence of:

- 1. Kamenju for Applicant**
- 2. Murage Court Assistant**

